



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

April 1, 2010

Kenneth R. Manning, CEO
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Richard W. Atwater, CEO/General Manager
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R8-2010-0013

Dear Messrs. Manning and Atwater:

Enclosed is a certified copy of Administrative Civil Liability Complaint No. R8-2010-0013 (hereinafter the "Complaint"). The Complaint alleges that the Chino Basin Watermaster and Inland Empire Utilities Agency have violated Regional Water Quality Control Board Order No. R8-2007-0039 (Order) for which a penalty may be imposed under Section 13350 of the California Water Code. Specifically, the Complaint alleges that the Chino Basin Watermaster and Inland Empire Utilities Agency violated requirements in the Order that require you to implement and plan to maintain hydraulic control to eliminate or control to *de minimus* levels the discharge of groundwater from the Chino Basin to the Santa Ana River. The Complaint proposes that administrative civil liability in the amount of two hundred twenty-seven thousand, seven hundred dollars (\$227,700) be imposed as authorized under Water Code Section 13350(e)(2). Also enclosed are a Waiver Form and a Hearing Procedure that sets forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet describing the Complaint process is available at:
http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml

The Fact Sheet describes the Complaint process and explains what the Chino Basin Watermaster and Inland Empire Utilities Agency can expect and your obligations as the process proceeds. If preferred, a hard copy of the Fact Sheet may be obtained by contacting Hope Smythe at (951) 782-4493.

Please read each document carefully. This Complaint may result in the issuance of an order by the Regional Board requiring that you pay a penalty.

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CERTIFIED MAIL™ RECEIPT	
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For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
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Total Postage & Fees	\$
Postmark Here	
Sent	Kenneth R. Manning
Street or PO	Chino Basin Watermaster
City, State, ZIP	9641 San Bernardino Road
	Rancho Cucamonga, CA 91730
PS Form	Instructions

California Environmental Protection Agency



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If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on June 10, 2010. The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

Pursuant to California Water Code Section 13323, the Chino Basin Watermaster and Inland Empire Utilities Agency have the option to waive their right to a hearing. Should the Chino Basin Watermaster and Inland Empire Utilities Agency waive their right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If the Chino Basin Watermaster and Inland Empire Utilities Agency choose to waive their right to a hearing, please sign and submit the enclosed Waiver Form with a check for two hundred twenty-seven thousand, seven hundred dollars (\$227,700) made payable to the State Water Resources Control Board-WDPF. The Waiver Form and check should be sent to the Regional Board office in the enclosed pre-printed envelope.

If the Chino Basin Watermaster and Inland Empire Utilities Agency do not wish to waive their right to a hearing, requesting a pre-hearing meeting, as set forth in the Hearing Procedure, is recommended. Should you wish to schedule a pre-hearing meeting, please contact me (951-782-3284) prior to April 20, 2010.

If you have any questions about the Complaint or the enclosed documents, please contact Hope Smythe at (951) 782-4493 (hsmythe@waterboards.ca.gov), Joanne Schneider at (951) 782-3287 (jschneider@waterboards.ca.gov) or Kurt Berchtold at (951) 782-3286 (kberchtold@waterboards.ca.gov). All legal questions should be directed to Reed Sato at (916) 341-5889 (rsato@waterboards.ca.gov), Director, Office of Enforcement.

Sincerely,



Gerard J. Thibeault
Executive Officer
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2010-0013, Waiver Form and Preprinted Envelope

cc with a copy of the complaint (by electronic mail only):

Regional Board Members
Gary Stewart (Regional Board Advisory Team)
State Water Resources Control Board, Office of Chief Counsel – David Rice (Regional Board Advisory Team Attorney)
State Water Resources Control Board, Office of Enforcement – Reed Sato (Regional Board Prosecution Team Attorney)

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STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:

Chino Basin Watermaster)
9641 San Bernardino Road)
Rancho Cucamonga, CA 91730)
Attn: Kenneth R. Manning)
)
)
Inland Empire Utilities Agency)
6075 Kimball Avenue)
Chino, CA 91708)
Attn: Richard W. Atwater)

Complaint No. R8-2010-0013
for
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Chino Basin Watermaster and Inland Empire Utilities Agency (hereinafter "Watermaster" and "IEUA") are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter "Regional Board"), may impose administrative civil liability under California Water Code (hereinafter "CWC") §13350.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint, unless pursuant to CWC Section 13323, the Watermaster and Inland Empire Utilities Agency waives their right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on June 10, 2010, at the Irvine Ranch Water District, 15600 Sand Canyon Ave, Irvine, CA 92618. The Watermaster and IEUA, or their designated representatives, will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting and the staff report relating to this item will be mailed to you not less than 10 days prior to the hearing date.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

1. The Chino Basin Watermaster (Watermaster) was established under a judgment from the San Bernardino County Superior Court. The Judgment adjudicated the Chino Groundwater Basin and required the Basin to be operated in accordance with the provisions of the Judgment and under the direction of a court-appointed watermaster. The Watermaster consists of various public and private entities that pump water from Chino Basin, including municipalities in the Chino Basin, water districts, agricultural operators, commercial enterprises and other private interests. The Judgment required the Watermaster to develop an Optimum Basin Management Program (OBMP) and to implement the OBMP. Components of the OBMP include extensive groundwater monitoring, development of recharge facilities, construction of storage and recovery projects, management of salt loads, and development of new water sources such as reclaimed water and storm water recharge.
2. In 2004, the Regional Board approved amendments to the Water Quality Control Plan for the Santa Ana Basin (Basin Plan) that established so-called "maximum benefit" objectives for TDS and nitrogen for the Chino North groundwater Management Zone (also referred to in this Complaint as the Chino Basin). The "maximum benefit" TDS and nitrogen objectives are less stringent than the "antidegradation" objectives for the Chino North Management Zone, which were also established by the 2004 Basin Plan amendments. The "maximum benefit" objectives accommodate water recycling and recharge projects, while ensuring protection of the beneficial uses of Chino Basin and downstream water bodies. Pursuant to the Basin Plan, the application of the "maximum benefit" objectives, rather than the "antidegradation objectives", is contingent on the implementation by the Watermaster and IEUA of their maximum benefit commitments, which are a specific program of projects and requirements (shown in Table 5-8a of the Basin Plan) that are also an integral part of the OBMP.
3. One of the maximum benefit requirements specified in the Basin Plan is that hydraulic control, *i.e.*, eliminating groundwater discharge from the Chino Basin to the Santa Ana River, or controlling the discharge to *de minimis* levels, be maintained.
4. On April 15, 2005, the Regional Board issued Water Recycling Requirements (Order No. R8-2005-0033) to the Watermaster and IEUA for Phase I of the Chino Basin Recycled Water Groundwater Recharge Project. Pursuant to Section H. PROVISIONS 4.h. of Order No. R8-2005-0033, the Watermaster and IEUA are required to implement their maximum benefit commitments, including maintaining hydraulic control.
5. On June 29, 2007, the Regional Board amended R8-2005-0033 and issued revised Water Recycling Requirements (Order No. R8-2007-0039) to the Watermaster and IEUA for the Chino Basin Recycled Water Groundwater Recharge Program, Phase I and Phase II Projects. Order No. R8-2007-0039 identifies the Watermaster and IEUA as "dischargers" or "users". Order No. R8-2007-0039 continues to require that the

Watermaster and IEUA implement their maximum benefit commitments. With respect to the maintenance of hydraulic control, Section G. PROVISIONS, 4.g(2) requires, *"The users shall submit a plan and schedule to correct loss of hydraulic control within 60 days of a determination by the Regional Board that hydraulic control is not being maintained. The schedule shall assure that hydraulic control is achieved as soon as possible but no later than 180 days after loss of hydraulic control is identified. The users shall implement the plan and schedule upon approval by the Regional Board."*

6. The Watermaster and IEUA have violated the provisions of Order No. R8-2007-0039 by failing to maintain hydraulic control and also failing, repeatedly, to comply with the correction schedule submitted in response to the requirements of Provision G.4g(2) of the Order:
 - a) On April 15, 2006, the Watermaster and IEUA submitted the Chino Basin Maximum Benefit Monitoring Program 2005 Annual Report. Analysis of groundwater level data in this report indicated that hydraulic control was not occurring in the area bounded by the Chino Hills and Desalter I Well No.5 in the Chino North Management Zone. This finding was confirmed in three reports prepared in 2006 by Wildermuth Environmental, Inc. at the direction of the Watermaster.
 - b) The Watermaster conducted detailed modeling investigations to develop a new desalter well field (hereafter the Chino Creek Well Field) and a groundwater management program that, when implemented, are expected to correct the loss of hydraulic control.
 - c) By letter to the Watermaster and IEUA dated February 14, 2007, the Executive Officer acknowledged the finding of the loss of hydraulic control and requested by March 16, 2007, a time schedule that identifies design and construction milestones for the Chino Creek Well Field, leading to correction of the loss of hydraulic control. The February 14, 2007 letter makes clear the Executive Officer's expectation, based on detailed discussions with Watermaster and IEUA on November 30, 2006, that the corrective action schedule to be proposed by the Watermaster/IEUA would not exceed three years.
 - d) By letter dated February 28, 2007, the Watermaster and IEUA requested that the submittal of the time schedule for design and construction milestones for the Chino Creek Well Field be delayed to March 31, 2007. On March 12, 2007, the Executive Officer granted the extension.
 - e) On March 30, 2007, the Watermaster and IEUA provided two versions of the requested Chino Creek Well Field design and construction milestone schedule: Schedule A – Pragmatic Schedule for the planning, design and construction of the Chino Creek Well Field; and, Schedule B – Accelerated schedule for planning, design and construction of the Chino Creek Well Field. Schedule A and B

identified completion dates of November 2012 and February 2012, respectively. The February 2012 schedule was recognized as feasible only if requisite analyses pursuant to the California Environmental Quality Act and other planning and design processes were completed expeditiously.

- f) On May 29, 2007, in a meeting with Watermaster and IEUA representatives, the Executive Officer approved the time schedule for achieving hydraulic control. The approved time schedule included interim milestone dates and specified that hydraulic control would be achieved by November 2012. One of the interim milestone dates required the EIR for the project to be finalized by September 1, 2009. The EIR has not yet been finalized.
- g) In response to a January 15, 2008 request by the Executive Officer for a status report on progress to achieve hydraulic control, on February 11, 2008, the Watermaster and IEUA submitted a letter acknowledging that hydraulic control had not yet been achieved and that some groundwater outflow from Chino North management zone appeared to be occurring near Chino Creek. The Watermaster/IEUA letter indicated that the magnitude of this discharge was estimated to be approximately 4,000 to 5,000 acre-ft/yr. The letter proposed a **revised** schedule for the planning, design and construction of the Chino Creek Well Field, with completion by early 2013.
- h) By letter dated May 23, 2008, the Executive Officer requested that the Watermaster and IEUA provide quarterly reports, including schedules, on progress to implement hydraulic control measures until hydraulic control is achieved.
- i) On July 15, 2008, the Watermaster and IEUA submitted a letter report constituting the July 15th progress report. Per this July 15th report, start-up of the Chino Creek Well Field was projected to occur in November 2013. The July 15th report also stated that: "...since February 2008 there has been no significant progress on the project."
- j) At the September 5, 2008, Regional Board meeting, the Executive Officer reported on the status of the Watermaster and IEUA's progress in meeting the maximum benefit commitments and requirements, including correction of the loss of hydraulic control. The Executive Officer reported that the Watermaster and IEUA had submitted a schedule on March 30, 2007 that specified a 4-year schedule (November 2012) to construct the Chino Creek Well field and thereby correct the loss of hydraulic control. The Executive Officer also reported that on February 11, 2008, the Watermaster and IEUA had submitted a revised schedule for the completion of the Chino Creek Well Field by May 2013. The Executive Officer reported that the Watermaster and IEUA had also reported on July 15, 2008 that there had been no significant progress on the Well Field project since February 2008. Testimony provided by the Watermaster indicated that the delay

was due, in significant part to financial and membership issues within the Chino Desalter Authority that were expected to be resolved shortly.

- j) Subsequently, at the November 21, 2008 Regional Board meeting, the Executive Officer reported that Watermaster representatives had indicated that the outstanding issue related to CDA had been resolved and that the plan and schedule provided by the Watermaster and IEUA would assure that hydraulic control would be achieved by November 2013. Given the reported resolution of issues, the Executive Officer did not propose enforcement by the Regional Board, given the assurances by the Watermaster.
 - k) On October 30, 2009, the Watermaster and IEUA submitted the Chino Desalter Phase 3 Quarterly report – July 1, 2009 to September 30, 2009. The quarterly report included a revised schedule for construction of the Chino Creek Wellfield: construction was to begin on August 7, 2008 and be complete by December 2, 2014. This is more than two years beyond the November 2012 schedule identified in the March 30, 2007 Watermaster submittal.
 - l) The Watermaster and IEUA have failed to maintain hydraulic control and to take timely action to correct the loss of hydraulic control, as required by Order No. R8-2007-0039.
 - m) By electronic message dated December 9, 2009, the Executive Officer advised the Watermaster and IEUA of the intent to proceed with enforcement action for the continuing failure by Watermaster and IEUA to meet the maximum benefit requirements specified in Order No. R8-2007-0039, specifically, those requirements pertaining to hydraulic control.
7. Pursuant to CWC § 13350. (a) Any person who... (2) in violation of any **waste discharge requirement**, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).
8. Pursuant to § 13350 (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both. The Executive Officer proposes to impose civil liability per CWC §13350 (e)(1), on a daily basis.
9. CWC §13350(e)(1) states that the civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs. The maximum liability for the violation cited above on a daily basis is \$1,060,000 (212 days x \$5,000 per day). This is based on 212 days of violation of the September 1, 2009 deadline for finalizing the EIR.

10. CWC §13327 specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>The Watermaster and IEUA have failed to comply with Order No. R8-2007-0039 wherein the Watermaster and IEUA are required to implement the maximum benefit program commitment, to maintain hydraulic control to eliminate or control to <i>de minimus</i> levels the discharge of groundwater from the Chino Basin to the Santa Ana River. As a result, hydraulic control has not been achieved at least since 2006 and continues not to be achieved. The continuing failure to correct the loss of hydraulic control will adversely affect the quality and beneficial uses of affected receiving waters. The requirement to achieve hydraulic control was based on extensive analyses, conducted as part of 2004 Basin Plan amendments, to incorporate maximum benefit objectives and to identify measures necessary to assure that other receiving waters are not adversely affected as the result of implementation of those objectives.</p> <p>The Watermaster and IEUA acknowledged in 2006 that hydraulic control was not being met and have failed to address the problem in a timely manner, as required by Order No. R8-2007-0039.</p> <p>The estimated 4,000 - 5,000 acre-feet per year of groundwater in the Chino Basin that is not contained in Chino Basin, rises into the Santa Ana River and becomes part of the surface flows recharged in the Orange County Groundwater Management Zone. The Santa Ana River serves as the primary source of water supply through groundwater recharge for Orange County. The 2006 ambient TDS and nitrate-nitrogen water quality determinations for the Chino Basin were 340 mg/L and 9.7 mg/L, respectively – representing a 40 mg/L increase in TDS and a 2.3 mg/L increase in nitrate-nitrogen from the 1997 ambient water quality determination. Absent hydraulic control, discharges from Chino Basin could adversely affect the quality of groundwater discharge to the River and the quality of flows recharged in the Orange County Groundwater Management Zone, and thus the quality of Orange County groundwater used for domestic and municipal supply.</p>

Factor	Comment
B. Culpability	<p>The Watermaster and IEUA are responsible for implementing the maximum benefit requirements specified in Order No. R8-2007-0039, including the requirement to maintain hydraulic control and to identify and implement an acceptable plan to correct the loss of hydraulic control, should it occur.</p> <p>Both IEUA and the Watermaster have detailed knowledge and understanding of the basis for the requirement to maintain hydraulic control and to correct the failure to maintain control. Both IEUA and Watermaster are aware that the application of "maximum benefit" objectives is contingent on their implementation of maximum benefit commitments specified in the Basin Plan and in Order No. R8-2007-0039. To support implementation of the OBMP and thereby optimize the use of water resources, including recycled water, in the Chino Basin, the Watermaster and IEUA sought approval and implementation of the "maximum benefit" objectives and committed to implement a specific program of programs and projects, including actions necessary to maintain hydraulic control.</p>
C. Economic Benefit or Savings	<p>Regional Board staff has insufficient information to assess the economic benefit of the failure to implement the Chino Creek Well Field. The delay in constructing the facilities needed for maintaining hydraulic control has resulted in cost savings to the member agencies of the Chino Basin Desalter Authority, the Watermaster and IEUA. The exact cost benefit from this delay could not be ascertained. Regional Board staff believes that the assessment proposed in this complaint is adequate to recover these savings.</p>
D. Prior History of Violations	<p>Neither Watermaster nor IEUA has violated Order No. R8-2007-0039 in the past.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 300 hours investigating the failure of The Watermaster to maintain hydraulic control and preparing this enforcement action (@\$70 per hour, the total cost for staff time is \$21,000.</p>

Factor	Comment
F. Ability to pay	<p>According to the following document, "The Watermaster, Thirty-Second Annual Report, Fiscal Year 2008-2009", including an Independent Auditors' Report, the Watermaster's net assets at the end of the 2008-2009 fiscal year totaled \$10,995,966, a 77% increase in net assets over the previous fiscal year. This takes into account operating expenses, non-operating expenses and all revenues. Therefore, it appears that the Watermaster has the ability to pay the proposed administrative civil liability.</p> <p>According to IEUA's "Budget in Brief, FY 2009/10", for the 2009-10 fiscal year, IEUA's adopted budget includes an ending fund balance of \$111,000,000. This takes into account operating expenses, capital program costs, net income and prior fiscal year roll-over funding. Therefore, it appears that IEUA has the ability to pay the proposed administrative civil liability.</p>

11. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed administratively on Chino Basin Watermaster in the amount of \$227,700 for the violation cited above.

This penalty assessment is based on a consideration of the potential for harm from the failure to maintain hydraulic control and the repeated failure to implement control actions in a timely manner. The Executive Officer determined that an assessment of \$5,000 per day is appropriate. The total assessment based on a total of 212 days of violation is \$1,060,000. This amount is then adjusted based on the potential harm from the violation, adjustment to the per day assessment amount, and the Watermaster's and IEUA's culpability, cooperation to address the violation and prior history of violations. Based on these findings, the Executive Officer finds that an assessment of \$206,700 is appropriate.

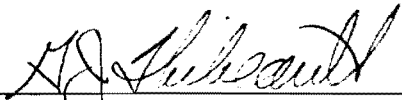
CWC §13327 also requires consideration of economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. These costs are added to the final liability to determine the assessed civil liability for the alleged violation(s). No economic benefit has been assessed for the Watermaster's failure to implement the hydraulic control program. The costs of investigation and enforcement are considered as one of the "other factors as justice may require". The staff costs (\$21,000) are added to the amount in the above paragraph, for a total assessment of \$227,700.

WAIVER OF HEARING

Please see the attached Wavier Form for details regarding the waiver procedures.

If you have any questions, please contact Hope Smythe at (951) 782-4493, Joanne Schneider at (951) 782-3287 or Kurt Berchtold at (951)782-3286.

4-1-10
Date



Gerard J. Thibeault
Executive Officer
Regional Board Prosecution Team



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana



Arnold Schwarzenegger
Governor

HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0013

ISSUED TO

Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

and

Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

San Bernardino County

SCHEDULED FOR JUNE 10, 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Executive Officer has issued an Administrative Civil Liability Complaint (hereinafter "Complaint") pursuant to California Water Code Section 13323 against the Chino Basin Watermaster and Inland Empire Utilities Agency (hereinafter "Dischargers") alleging that the Dischargers have violated Water Code Section 13350 by violating Santa Ana Regional Water Quality Control Board Order No. R8-2007-0039 (Order) wherein the Dischargers are required, pursuant to maximum benefit program commitments in the Basin Plan, to maintain hydraulic control to eliminate or control to *de minimus* levels the discharge of groundwater from the Chino Basin to the Santa Ana River. The Complaint proposes that administrative civil liability in the amount of two hundred twenty-seven thousand, seven hundred dollars (\$227,700) be imposed as authorized by Water Code Section 13350(e)(2). A hearing is currently scheduled to be held before the Regional Board during its June 10, 2010 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on June 10, 2010 will commence at 9:00 a.m. or as soon thereafter as practicable, or as announced in the Regional Board meeting agenda. The meeting will be held at the Irvine Ranch Water District, Multi-Purpose Room, 15600 Sand Canyon Ave., Irvine, California. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml.

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The agenda will include the final hearing date and location, and the estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY APRIL 13, 2010 OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

1. Regional Board Prosecution Team
2. Chino Basin Watermaster and Inland Empire Utilities Agency, also referred to as the Dischargers

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on April 13, 2010 by Advisory Team Attorney David Rice, Davidrice@waterboards.ca.gov. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), the information required of

designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on April 20, 2010. The parties will be notified by 5 p.m. on April 27, 2010 in writing whether the request has been granted or denied.

Primary Contacts

Advisory Team: **David Rice (email: Davidrice@waterboards.ca.gov)**
Phone: 916-341-5182
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Prosecution Team: **Reed Sato (email: rsato@waterboards.ca.gov)**
Phone: 916-341-5889
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dischargers: **Kenneth R. Manning, CEO**
Email: KManning@CBWM.org
Phone: 909-484-3888
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Richard Atwater, CEO/General Manager
Email: atwater@ieua.org
Phone: 909-993-1740
6075 Kimball Avenue
Chino, CA 91708

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: David Rice, Staff Counsel, State Water Resources Control Board and Gary Stewart, Chief of Compliance, Regulations and Permits.

Members of the Prosecution Team are: Reed Sato, Office of Enforcement, State Water Resources Control Board; Gerard Thibeault, Executive Officer, Santa Ana Regional Water Quality Control Board; Kurt Berchtold, Assistant Executive Officer, Santa Ana Regional Water Quality Control Board; Joanne Schneider, Division Chief, Santa Ana Regional Water Quality Control Board; Hope Smythe, Inland Waters Planning Unit Chief, Santa Ana Regional Water Quality Control Board; and Xinyu (Cindy) Li, Inland Waters Planning Unit, Santa Ana Regional Water Quality Control Board.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: Each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than May 27, 2010. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.



5. If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit 15 hard copies of its information and one electronic copy of the information to Advisory Team Attorney David Rice so that it is received by 5 p.m. on April 29, 2010.

The remaining designated parties shall submit 15 hard copies of their information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on April 29, 2010.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 15 hard copies of their rebuttal information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on May 27, 2010. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than April 29, 2010. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team by May 27, 2010 for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must

be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on May 27, 2010. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: alucas@waterboards.ca.gov; phone: 951-782-7961). This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml.

Although the web page is updated regularly, to assure access to the latest information, you may contact Reed Sato (rsato@waterboards.ca.gov).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team Attorney David Rice (Davidrice@waterboards.ca.gov).


IMPORTANT DEADLINES

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the discharger waives that requirement.)

April 1, 2010	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team
April 10, 2010	Deadline for publication of Public Notice
April 13, 2010	Deadline for requests for designated party status.
April 13, 2010	Deadline for objections, if any, to proposed Hearing Procedure.
April 20, 2010	Deadline for oppositions to requests for designated party status.
April 20, 2010	Discharger's deadline for waiving right to hearing.



April 29, 2010	Advisory Team issues decision on requests for designated party status, if any.
April 29, 2010	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements."
April 29, 2010	Remaining Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements."
April 29, 2010	Interested Persons' deadline for written non-evidentiary policy statements.
May 27, 2010	All Designated Parties' deadline for rebuttal information, evidentiary objections, and requests for additional time at the hearing, if any.
June 10, 2010	Public Hearing.



Gerard J. Thibeault
Executive Officer
Regional Board Prosecution Team



Date





Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

Santa Ana Region

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www.waterboards.ca.gov/santaana



Arnold Schwarzenegger
Governor

WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the Chino Basin Watermaster and the Inland Empire Utilities Agency (hereinafter "Dischargers") in connection with Administrative Civil Liability Complaint No. R8-2010-0013 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board (Santa Ana River Regional Water Quality Control Board (hereinafter "Regional Board")) shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Dischargers waive the hearing requirement and will pay the liability in full.)**

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Board.
- b. I certify that the Dischargers will remit payment for the proposed civil liability in the full amount of **two hundred twenty-seven thousand, seven hundred dollars (\$227,700)** by check that references "ACL Complaint No. R8-2010-0013." made payable to the "State Water Resources Control Board-WDPF". Payment must be received by the Regional Board by **April 20, 2010** or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Dischargers waive the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Dischargers may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Dischargers will promptly engage the Regional Board Prosecution Team in settlement

California Environmental Protection Agency



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**WAIVER FORM
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discussions to attempt to resolve the outstanding violation(s). By checking this box, the Dischargers request that the Regional Board delay the hearing so that the Dischargers and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

- ☐ **(OPTION 3: Check here if the Dischargers waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Dischargers may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Dischargers requests that the Regional Board delay the hearing and/or hearing deadlines so that the Dischargers may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.
- ☐ **(OPTION 4: Check here if the Dischargers waive the hearing requirement and will submit a proposed compliance project or supplemental environmental project. If the proposal is rejected, the Dischargers will pay the liability in full.)**
- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Board.
 - b. I certify that the Prosecution Team has authorized the Dischargers to submit a proposed Supplemental Environmental Project in lieu of payment of \$113,850. I agree to submit the proposal and check for \$113,850 [the remainder of the proposed civil liability] within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy. If I receive written notice from the Prosecution Team that the Dischargers has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Dischargers will remit payment of the proposed civil liability in the full amount of two hundred twenty-seven thousand, seven hundred dollars (**\$227,700**) by check that references "ACL Complaint No. R8-2010-0013." made payable to the "State Water Resources Control Board - WDPF" within ten days of the notice. If payment is not timely received, the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
 - c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the



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Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

